

Rule 406. Habit; Routine Practice.

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Comment to 2012 Amendment

The language of Rule 406 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

406.010 Habit describes a person's regular or semi-automatic response to a repeated specific situation, while character refers to a generalized description of a person's disposition.

State v. Spreitz, 190 Ariz. 129, 945 P.2d 1260 (1997) (trial court did not abuse discretion in admitting evidence of victim's habit of rarely accepting rides, which was offered to show it was unlikely she willingly accompanied defendant in his car).

State v. Slover, 220 Ariz. 239, 204 P.3d 1088, ¶¶ 15–18 (Ct. App 2009) (while intoxicated, defendant drove off roadway; truck rolled down embankment and landed on roof over shallow creek; officers found passenger-victim dead, lying in creek with head submerged in water; victim had BAC of .231; defendant contended that victim was driving truck, and claimed he and victim had habit of driving each other's trucks; defendant offered as habit evidence testimony of gas station attendant that, over 4-year period she worked at gas station, defendant frequently was driving when they arrived while victim was driving when they left; trial court precluded this evidence because it concluded victim's driving was not semi-automatic or reflexive, or sufficiently specific, regular, or numerous to qualify as habit evidence; court agreed with trial court's reasoning and held trial court did not abuse discretion in precluding that evidence).

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